

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JACQUELINE M. STILSON**

Claimant

VS.

**MONTGOMERY WARD**

Respondent

AND

**SEDGWICK JAMES CMS**

Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

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Docket No. 132,340

**ORDER**

Respondent appeals the May 17, 2000, preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. The Administrative Law Judge found that claimant did not suffer an intervening injury and granted claimant temporary total disability and medical treatment and ordered respondent to pay Dr. MacMillan's bill and to reimburse claimant for those out-of-pocket expenses.

**ISSUES**

Is claimant's ongoing need for medical treatment related to her 1985 injury with Montgomery Ward or did claimant suffer a separate, independent intervening accident or series of accidents while working for Walgreens after August 26, 1991?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant first suffered injury while working for respondent Montgomery Ward on October 8, 1985, while moving cases of antifreeze which weighed in excess of 50 pounds. Claimant experienced significant pain in her low back with radiculopathy into her legs. Claimant was initially treated by chiropractor Raleigh Trembly, D.C. However, her symptoms worsened, and she ultimately came under the care and treatment of neurosurgeon K. N. Arjunan, M.D. CT scans and myelograms confirmed a herniated disc at L4-5 with spinal canal narrowing. A follow up myelogram also confirmed a disc

herniation at L5-S1. Claimant underwent a right hemilaminectomy with discectomy and foraminotomy at L5-S1 on May 12, 1988.

Claimant continued working for respondent Montgomery Ward until July of 1991, when she terminated her employment. On August 26, 1991, she was hired by Walgreens in their cosmetics department. Claimant continues at Walgreens as the manager of the cosmetics department.

Claimant has, over the years, been referred to numerous doctors for treatment of her ongoing back complaints. She returned to Dr. Arjunan on occasion and was also treated by Stephen Saylor, M.D., a family practitioner. Dr. Saylor treated claimant on numerous occasions, both before and after her beginning work at Walgreens. In Dr. Saylor's notes prior to claimant leaving Montgomery Ward, he noted that claimant's low back discomfort had resolved. However, on August 20, 1991, shortly after claimant left Montgomery Ward, claimant returned to Dr. Saylor with back complaints brought about by doing her back exercises. That problem also appeared to resolve. But claimant continued seeing Dr. Saylor periodically, with occasional problems in her lumbar spine. Claimant would occasionally experience radiculopathy into her buttocks.

By February 1992, claimant was again on pain medication for her back complaints. At the time of her June 11, 1993, annual physical, claimant advised Dr. Saylor that her back pain from her surgery had become more intense. An MRI performed at the time showed postoperative changes, but no evidence of recurrent disc herniation. In January 1995, claimant advised Dr. Saylor that she had a sudden increase of pain while "not doing anything special." Dr. Saylor diagnosed acute low back strain at that time.

In June 1995, while undergoing her annual physical, claimant advised Dr. Saylor of sudden twinges of mid back pain. She also described aching in her legs from standing all day at Walgreens. Claimant was last seen by Dr. Saylor on October 14, 1996, at which time she described chronic low back pain which she attributed to the surgery. Claimant was regularly taking both Ibuprofen and Tylenol.

At the preliminary hearing of November 24, 1999, claimant testified that, since her surgery, she had never had a week without pain.

When claimant left Montgomery Ward, she was under a 25-pound weight-lifting restriction. When claimant went to work for Walgreens, she advised them of the weight-lifting restrictions, and Walgreens agreed to accommodate claimant's limitations. Claimant's supervisor at Walgreens, Dave Eshelman, was aware of these limitations and did everything in his power to meet the limitations placed upon claimant by her treating physicians. He testified that meeting the 25-pound restriction was rarely ever a problem and that normally claimant could perform her job within a 20-pound weight limitation.

By April 1997, claimant was complaining of terrible low back pain which had been in existence for at least five weeks with no known injury. By April 30, 1997, claimant was having difficulties performing her job because of back pain. Claimant was off work until May 28, 1997, during which time she had an MRI and an epidural injection. The treatment provided during this time was paid for through Walgreens' medical benefits program. Claimant also drew disability benefits at that time.

Claimant was later treated by Roy Hall, M.D. The treatment change was necessitated by a change in Walgreens' insurance program. Medical notes from Laurel Vogt, M.D., in November 1997 showed a clear worsening of claimant's preexisting degenerative disc disease which the doctor noted was brought about by work activities at Walgreens. Claimant advised Dr. Vogt that, in November of 1997, she was lifting heavy boxes and experienced a sharp pain through her right hip and down her right leg. She also advised Dr. Vogt that her job at Walgreens entailed quite a bit of lifting. Claimant had been wearing a back brace at Walgreens ever since she first started in 1991. By November 13, 1997, claimant was having difficulty walking. Her straight leg raise was positive. By May 1998, claimant's back pain was described as "intractable."

Claimant's job at Walgreens required that she stand on a regular basis. There was some bending and stooping required. Mr. Eshelman opined that approximately 50 percent of the time, claimant would be standing while waiting on customers, with stocking taking up 25 percent of the time. The remaining 25 percent of the time involved redoing the aisles, resetting departments and moving merchandise, all of which would require bending and stooping.

Claimant was repeatedly questioned during the three preliminary hearings about whether she suffered any injuries while working at Walgreens. Claimant vehemently denied any injuries suffered at Walgreens. The record describes sudden increases in pain on different occasions while performing various activities and, at other times, discusses increases in pain while performing no specific activities.

By February 1999, claimant was being treated by Karen E. Bruce, M.D. At that time, claimant's back was causing her significant difficulty. The pain had intensified, and claimant was required to leave work early. Claimant was off work from March 4, 1999, until May 28, 1999. She was paid disability from Walgreens, and the bills were still being paid for by Walgreens' health care program.

Claimant did return to Dr. Arjunan in November 1999. Dr. Arjunan opined that claimant's problems were not related to any injury. She simply had degenerative disc disease that, in his opinion, was progressing.

As a result of the conflicts in the various medical reports, claimant was referred to Sergio Delgado, M.D., a board certified orthopedic surgeon, on January 13, 2000, for an

independent medical examination. Dr. Delgado was provided a history of claimant's ongoing symptoms, as well as the lengthy medical file on claimant, including reports from St. Francis Hospital and Medical Center, Dr. Saylor, Dr. Trembly, Dr. Arjunan and Joseph G. Sankoorikal, M.D. Dr. Delgado was also provided the radiographic studies and MRIs from June 1993, May 1994, May 1997 and February 1999. After reviewing the medical reports and giving claimant a complete physical, Dr. Delgado opined that claimant suffered from recurrent back and leg pain, post laminectomy. He felt that claimant's condition was either being caused by epidural scarring and adhesions or were the residuals of the 1985 injury. His recommendations included a possible spinal stabilization which could involve an interior interbody discectomy with fusion at the L5-S1 level. He also recommended continued job modifications with an avoidance of prolonged standing, stooping, bending and twisting, and recommended no lifting in excess of 35 pounds repetitively.

In workers compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1985 Supp. 44-501 and K.S.A. 1985 Supp. 44-508(g).

When a primary injury is shown to have arisen out of and in the course of employment, every natural consequence flowing from that injury, including a new and distinct injury, is compensable as long as it is the direct and natural result of the primary injury. Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

In order for the deterioration of an injury to be compensable, the increase in disability must be shown to be a direct and natural result of the primary injury. (Citation omitted.) The passage of time in and of itself is not a compensable injury. Thus, where the deterioration would have occurred absent the primary injury, it is not compensable. However, where the passage of time causes deterioration of a compensable injury, the resulting disability is compensable as a direct and natural result of the primary injury. Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997).

Respondent argues that Dr. Arjunan's conclusion verifies that claimant's condition is not related to her injury, but rather to the passage of time and a progressive degenerative disc disease condition. However, Dr. Arjunan's medical report of November 11, 1999, while discussing degenerative disc disease, also documents a clear history of claimant's deteriorating condition over the years. The multiple tests performed on claimant appeared to indicate a progression of her degeneration at L3-4, L4-5 and L5-S1. While his opinion does not relate claimant's condition to any specific injury, it also does not specifically identify to what he attributes her worsening problems.

Dr. Delgado's independent medical examination, on the other hand, is specific. His conclusion details the 1985 injury with progressive symptoms through the year 2000. He

opined that recurrent back and leg pain is not unusual, post laminectomy, which may come from claimant's degenerative condition, but also may be caused by epidural scarring and adhesions from the various surgeries and treatments claimant has undergone over the years.

The Appeals Board acknowledges claimant has suffered episodes of increased pain while working at Walgreens. However, claimant denies any specific injury. Her pain incidents generally involved increases of pain with no known injury or physical activity. Only occasionally would claimant be able to pinpoint any specific activities which caused her increased symptoms. Claimant's testimony described her back symptoms as being in existence since the 1985 incident and the 1988 surgery, with little or no long-term relief since. Claimant testified that she had never gone for more than a week without back pain.

The Appeals Board finds that claimant's ongoing symptoms and need for treatment are related to her injury suffered with Montgomery Ward. Therefore, the decision of the Administrative Law Judge to assess the treatment costs to respondent Montgomery Ward should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order For Compensation of Administrative Law Judge Bryce D. Benedict dated May 17, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2000.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
James C. Wright, Topeka, KS  
Jerry R. Shelor, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director